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[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:PSI:B03
PLR-109766-07

Date:
January 31, 2008

LEGEND

Taxpayer =

Year =

Date =

Dear _____:

This letter responds to a letter dated December 18, 2006, and subsequent correspondence, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations. Taxpayer requests an extension of time to elect to treat all of Taxpayer's interests in rental real estate as a single rental real estate activity under § 469(c)(7)(A) of the Internal Revenue Code and § 1.469-9(g)(3) of the Income Tax Regulations.

FACTS

Taxpayer is an individual involved full-time in a real estate business. Taxpayer represents that in Year he was in a real property business as defined § 469 and was qualified under § 469(c)(7)(B) to make an election to treat all interests in rental real estate as a single rental real estate activity. Taxpayer relied on a qualified tax professional, who failed to properly prepare the election under § 469(c)(7). Consequently, Taxpayer filed his income tax return for Year without the statement required by § 1.469-9(g)(3) and, thus, made no election under § 469(c)(7).

LAW AND ANALYSIS

Under § 469(c)(2), the term “passive activity” generally includes any rental activity. Section 469(c)(7) provides a limited exception to this rule for taxpayers in a real property trade or business. Specifically, § 469(c)(7)(A) provides that if a taxpayer meets the requirements of § 469(c)(7)(B), the taxpayer’s rental real estate activity will no longer be presumptively passive. By its terms, the exception under § 469(c)(7)(A) is to be applied as if each interest of the taxpayer in rental real estate were a separate activity. However, under § 1.469-9(g)(1), a qualifying taxpayer may elect to treat all of the taxpayer’s interests in rental real estate as a single rental real estate activity.

Section 1.469-9(g)(3) provides that a qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental estate activity by filing a statement with the taxpayer’s original income tax return for the taxable year. Section 1.469-9(g)(3) describes the information that must be contained in this statement.

Under § 301.9100-1(c) the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, Taxpayer has until Date to make an election under § 469(c)(7)(A) to treat

all of his interests in rental real estate as a single rental real estate activity effective Year. The election must be made in the form of the statement required by § 1.469-9(g)(3) and attached to Taxpayer's amended return for Year. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Taxpayer satisfies the requirements under § 469(c)(7)(B) or whether Taxpayer materially participates in any activity.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to Taxpayer's authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes